

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

In re:

BARFLY VENTURES, LLC, *et. al.*,¹
Debtors.

Chapter 11
Case No. 20-01947-jwb
Hon. James W. Boyd

// *Jointly Administered*

**FIRST AND FINAL APPLICATION FOR COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF ROCK CREEK ADVISORS, LLC, AS
FINANCIAL ADVISOR TO THE DEBTORS AND DEBTORS IN POSSESSION
FOR THE PERIOD FROM JUNE 3, 2020 THROUGH FEBRUARY 28, 2021**

Pursuant to sections 330 and 331 of Title 11 of the United States Code (the “Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (collectively, the “Bankruptcy Rules”) and the Court’s *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* entered on June 30, 2020 [Docket No. 113] (the “Compensation Procedures Order”), Rock Creek Advisors, LLC (“Rock Creek” or the “Firm”), financial advisor to the above-captioned debtors and debtors in possession (collectively, the “Debtors”), hereby submits its *First and Final Application for Compensation and for*

¹ The Debtors and the last four digits of their federal employment identification number are: Barfly Ventures, LLC (8379); 9 Volt, LLC (d/b/a HopCat) (1129); 50 Amp Fuse, LLC (d/b/a Stella’s Lounge) (3684); GRBC Holdings, LLC (d/b/a Grand Rapids Brewing Company) (2130); E L Brewpub, LLC (d/b/a HopCat East Lansing) (5334); HopCat-Ann Arbor, LLC (5229); HopCat-Chicago, LLC (7552); HopCat-Concessions, LLC (2597); HopCat-Detroit, LLC (8519); HopCat-GR Beltline, LLC (9149); HopCat-Holland, LLC (7132); HopCat-Indianapolis, LLC (d/b/a HopCat-Broad Ripple) (7970); HopCat-Kalamazoo, LLC (8992); HopCat-Kansas City, LLC (d/b/a HopCat,-KC, LLC and Tikicat) (6242); HopCat-Lexington, LLC (6748); HopCat-Lincoln, LLC (2999); HopCat-Louisville, LLC (0252); HopCat-Madison, LLC (9108); HopCat-Minneapolis, LLC (8622); HopCat-Port St. Lucie, LLC (0616); HopCat-Royal Oak, LLC (1935); HopCat-St. Louis, LLC (6994); Luck of the Irish, LLC (d/b/a The Waldron Public House, LLC and McFadden’s Restaurant Saloon) (4255).

*Reimbursement of Expenses for the Period of June 3, 2020 through February 28, 2021 (the “Final Application”).*²

By this Final Application Rock Creek seeks a final allowance of (i) compensation in the amount of \$762,577.50; and (ii) actual and necessary expenses in the amount of \$738.68; for a total final award of \$763,316.18 and payment of the unpaid portion of such fees and expenses for the period June 3, 2020 through February 28, 2021 (the “Compensation Period”). A proposed order is being filed along with the first and final application.

Background

1. On June 3, 2020 (the “Petition Date”), the Debtors commenced these chapter 11 cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued in the possession of their property and have continued to operate and manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or committee has been appointed in these chapter 11 cases.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

3. On or about June 30, 2020, the Court signed the Compensation Procedures Order, authorizing certain professionals (“Professionals”) to submit monthly fee statements (“Monthly Statements”) for compensation and reimbursement for expenses, pursuant to the procedures specified therein. The Compensation Procedures Order further provides, among other things, that if no objections are made within seven (7) days after service of the Monthly Statement the Debtors

² If the Firm incurs any other fees or expenses after the filing of the Application, the Firm will supplement the application for the Court’s consideration.

are authorized to pay the Professional eighty percent (80%) of the requested fees and one hundred percent (100%) of the requested expenses. Professionals may also file and serve interim fee applications approximately every 120 days. All fees and expenses paid are on an interim basis until final allowance by the Court. Pursuant to the Compensation Procedures Order, Rock Creek has submitted six Monthly Statements for services rendered and expenses incurred from June 3, 2020 through and including November 30, 2020 and has received payment of 80% of fees and 100% of expenses on account of its six filed Monthly Statements. As of the date of this Final Application, Rock Creek has not received any objections to its Monthly Statements.

4. The retention of Rock Creek, as Financial Advisor for the Debtors, was approved effective as of June 3, 2020 by this Court's Order Authorizing and Approving the Retention Rock Creek Advisors, LLC as financial advisor for the Debtors and Debtors in Possession Effective as of the Petition Date entered on July 22, 2020 [Docket No. 188] (the "Retention Order"). The Retention Order authorized Rock Creek to be compensated on an hourly basis and to be reimbursed for actual and necessary out-of-pocket expenses.

**ROCK CREEK's APPLICATION FOR COMPENSATION AND
FOR REIMBURSEMENT OF EXPENSES**

Compensation Paid and Its Source

5. In connection with professional services rendered to the Debtors in this case during the Compensation Period, Rock Creek seeks allowance and payment of compensation in the total amount of \$762,577.50 and reimbursement of expenses in the amount of \$738.68, for a total final allowance of \$763,316.18 (the "Total Compensation").

6. Of the Total Compensation amount requested, Rock Creek has already been paid a total of \$538,017.76 in fees, and \$0.00 in expenses, pursuant to the terms of the monthly fee notice procedures detailed in the Compensation Procedures Order, under which Rock Creek was permitted to receive 80% of the fees sought and 100% of expenses sought, on a monthly basis, subject to approval through a subsequent interim and/or final fee application process (*see* Monthly Statements; Docket Numbers 200, 264, 323, 371, 395 and 422). This Final Application now seeks final approval of the total amount of fees and expenses through February 28, 2021, including the monthly amounts previously received and the remaining 20% holdback amounts for those months.

| Monthly Period | Docket No. | Fees | Expenses | Total Requested | Total Paid per Compensation Procedures Order | Retainer | Outstanding Balance |
|---|-------------------|---------------------|-----------------|------------------------|---|-----------------|----------------------------|
| June 2020 | 200 | \$149,032.50 | | \$149,032.50 | \$99,695.76 | \$19,530.24 | \$29,806.50 |
| July 2020 | 264 | \$157,717.50 | | \$157,717.50 | \$126,174.00 | | \$31,543.50 |
| August 2020 | 323 | \$96,807.50 | | \$96,807.50 | \$77,446.00 | | \$19,361.50 |
| September 2020 | 371 | \$132,545.00 | | \$132,545.00 | \$106,036.00 | | \$26,509.00 |
| October 2020 | 395 | \$115,715.00 | | \$115,715.00 | \$92,572.00 | | \$23,143.00 |
| November 2020 | 422 | \$45,117.50 | | \$45,117.50 | \$36,094.00 | | \$9,023.50 |
| Stub Period (December 2020 – February 28, 2021) | N/A | \$ 65,642.50 | \$738.68 | \$66,381.18 | \$0.00 | | \$66,381.18 |
| Total | | \$762,577.50 | \$738.68 | \$763,316.18 | \$538,017.76 | | \$205,768.18 |

7. Upon approval of this Final Application, the unpaid balance of \$205,768.18 may be paid by the Debtors to Rock Creek. This amount consists of 139,387.00 (the remaining 20% holdback from the Monthly Statements), \$65,642.50 in fees and \$738.68 in expenses (the full

amount of fees and expenses sought for the period of December 1, 2020 through February 28, 2021.

8. Rock Creek's services in these cases are described in detail in the time entries included in the Monthly Statements. In further support of this Final Application the following Exhibits are attached as follows:

- Exhibit A Itemization of fees and expenses included in First Monthly Statement [Docket No. 200];
- Exhibit B Itemization of fees and expenses included in Second Monthly Statement [Docket No. 264];
- Exhibit C Itemization of fees and expenses included in Third Monthly Statement [Docket No. 323];
- Exhibit D Itemization of fees and expenses included in Fourth Monthly Statement [Docket No. 371];
- Exhibit E Itemization of fees and expenses included in Fifth Monthly Statement [Docket No. 395];
- Exhibit F Itemization of fees and expenses included in Sixth Monthly Statement [Docket No. 422]; and
- Exhibit G Itemization of fees and expenses incurred during the stub period of December 1, 2020 through February 28, 2021.

9. The services rendered by Rock Creek during the Compensation Period are grouped into various categories, and the professionals who rendered those services are identified—along with the number of hours spent by each individual and the total compensation sought for each category—in the attachments to this Final Application. Brief descriptions of the services rendered by Rock Creek during the Compensation Period, by category, follow:

A. Attendance at Hearing

10. The Firm prepared for and attended the various hearings held during the pendency of these cases. The Firm, among other things: (i) prepared for and conducted a sale process with the Debtors' professionals, including preparation of a stalking horse asset purchase agreement, confidentiality agreement, and sale and bid procedures motion; (ii) addressed sale issues; (iii) conferred with estate professionals regarding the potential sale of FF&E; (iv) addressed lease rejection issues; addressed sale projections and wind-down budget; (v) analyzed and addressed use of PPP funds, (vi) participated in mediation with unsecured creditors committee and (vii) addressed post sale hearing issues.

Total Hours: 34.4

Total Fees: \$18,560.00

B. Bankruptcy Reporting

11. The Firm, among other things, assisted and prepared the schedules of assets and liabilities and statements of financial affairs for each of the Debtors. Additionally, Rock Creek prepared monthly operating reports for the period June 2020 through October 2020. The Firm, among other things, addressed liquor license issues at various leased locations.

Total Hours: 259.1

Total Fees: \$117,607.50

C. Business Operations & Analysis

12. The Firm addressed various operational issues of the Debtors, including, but not limited to: (i) CARES Act / SBA Paycheck Protection Program use and forgiveness ; (ii) post-petition customer programs and use of credit cards; (iii) preparing weekly post-petition budgets; and (iv) assisting the Debtors with the preparation other various analyses, (v) assist and prepare

pro forma financial analyses for all locations, (vi) reviewing insurance financing and D&O coverage issues; (vii) analyzed employment and severance agreements; (viii) preparing and maintaining the Debtors 13-week cash forecast, and (ix) populate and manage data room.

Total Hours: 552.4 Total Fees: \$262,762.50

D. Case Administration

13. The Firm assisted with (i) the preparation of first and second day motions and (ii) reviewed and analyzed PACA and 503(b)(9) claims. Additionally, the Firm (i) prepared for and participated in the initial debtor interview (the “IDI”); (ii) responded to inquiries from the U.S. Trustee regarding the IDI; and (iii) prepared for and attended the section 341(a) meeting of creditors.

Total Hours: 56.4 Total Fees: \$26,590.00

E. Creditor/Committee/Lender Communication

14. The Firm, among other things: (i) addressed inquiries from creditors regarding various claim issues; (ii) had status and update calls with unsecured creditors committee professionals and related information requests; (iii) reviewed and reconciled PPP fund uses; (iv) liquor license issues at various leased locations; and (v) addressed sale issues with the Committee.

Total Hours: 68.9 Total Fees: \$35,152.50

F. Fee Application

15. The Firm, among other things, prepared its monthly fee statements, conferred with estate professionals regarding fees and prepared the instant Final Application.

Total Hours: 88.7 Total Fees: \$28,227.50

G. Landlord Negotiations

16. The Firm negotiated with all landlords concerning ongoing rent, cure and claim amounts and issues in connection with lease rejections, lease amendments and lease payments.

Total Hours: 144.9 Total Fees: \$76,162.50

H. Meetings – Debtor/Counsel/Other

17. The Firm had several meetings/calls and emails with the Debtor's employees regarding operating issues relating to sales reporting, cash reporting, financial statement preparation, and accounts payable processing. In addition, phone calls with the Debtor's and Committee professionals with respect to status of issues in connection with lease rejections, lease amendments and lease payments; the proposed sale and asset purchase agreement; PPP loan regulations; cash flow reporting and various informational requests.

Total Hours: 221.0 Total Fees: \$104,042.50

I. Sale Process

18. The Firm, among other things: (i) reviewed and prepared financials analysis for the Confidential Information Memorandum ("CIM"); (ii) assisted the Debtor's investment banker with identifying potential buyers; (iii) reviewed transition services agreement; (iv) prepared, reviewed, analyzed and updated waterfall for potential sale scenarios; (v) assisted with review of competing bids; and (vi) preparation of the asset purchase agreement schedules.

Total Hours: 198.9 Total Fees: \$93,472.50

19. Rock Creek submits that the compensation sought under this Final Application represents a fair and reasonable amount for the services rendered during the Compensation Period, given the criteria set forth in section 330 for evaluating applications for compensation, namely:

- a. the time spent on such services;
- b. the rates charged for such services;
- c. whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- d. whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- e. with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- f. whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

20. Detailed itemizations of all expenses incurred during the Compensation Period are included in **Exhibits A-G** attached hereto and incorporated herein by reference. A summary of the expenses incurred by category during the Compensation Period are as follows:

| Expense Category | Amount |
|-------------------------|-----------------|
| Parking | \$ 3.00 |
| Postage | \$51.78 |
| Pacer – Court Research | \$683.90 |
| Grand Total | \$738.68 |

21. All expenses incurred by Rock Creek in connection with its representation of the Debtors were ordinary and necessary expenses. The expenses charged to clients include, mail and express mail charges, document retrieval, and travel expenses.

22. This Final Application is Rock Creek's first request for allowance of fees and expenses as an administrative expense for services performed as financial advisor to the Debtors. Under this Final Application, Rock Creek seeks an order (a) allowing and approving on a final basis Total Compensation to Rock Creek of \$762,577.50 for professional services rendered, and reimbursement of \$738.68 for actual and necessary expenses incurred by Rock Creek during the Compensation Period; and (b) authorizing payment to Rock Creek for amounts approved under the Final Application to the extent not already paid by the Debtors pursuant to the Compensation Procedures Order.

23. Rock Creek received payment from the Debtors during the year prior to the Petition Date in the approximate amount of \$252,835.00. To date, Rock Creek has been paid a total of \$538,017.76 by the Debtors for its postpetition fees and expenses incurred in these Chapter 11 cases during the Compensation Period pursuant to the Compensation Procedures Order. Such amount has not been shared, and no agreement or understanding exists between Rock Creek and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with these chapter 11 cases. Presuming this Final Application is approved in its entirety, the outstanding amount owed to Rock Creek for unpaid fees and expenses during the Compensation Period will be \$205,768.18.

SUPPLEMENTAL FEES

24. Because there may be other actions that need to be taken prior to conversion of these cases in order to aid the soon to be appointed chapter 7 trustee in successfully maximizing the recovery to unsecured creditors, Rock Creek may need to continue providing some services between the date of the filing of this Application and the conversion date. It would be problematic if Rock Creek was obliged to cease all work following the filing of this Application.

25. Accordingly, no later than eight days before submitting its proposed order approving this Application, Rock Creek will file a supplemental fee statement with any additional time or expenses incurred (“Supplemental Fee Statement”) subsequent to the Compensation Period. Rock Creek will serve the Supplemental Fee Statement on the notice parties set forth in the Compensation Procedures Order and such notice will provide that such parties will have a period of seven days to file any objections to the Supplemental Fee Statement. If no objections are timely filed, then the fees and expenses set forth in the Supplemental Fee Statement will, subject to Court approval, likewise be deemed allowed on a final basis.

26. The foregoing procedure is appropriate in this case because: (i) Rock Creek estimates that the aggregate fees and expenses set forth in the Supplemental Fee Statement will be minimal, (ii) the funds to be utilized to pay amounts requested in the Supplemental Fee Statement are capped by the Wind-Down Budget, (iii) the funds to be utilized to pay amounts requested in the Supplemental Fee Statement will not impact the estate because, pursuant to the Sale Order, any unused funds will be returned to the Prepetition Secured Lenders upon conversion of these cases, and (iv) any fees and expenses exceeding that cap set forth in the Wind-Down Budget will be voluntarily disallowed.

NOTICE

27. In compliance with Bankruptcy Rule 2002(a)(6), Local Bankruptcy Rule 2016-2(c), and the Compensation Order, Rock Creek will provide notice of this Final Application through the Court's ECF system to: (a) the Office of the United States Trustee for the Western District of Michigan; (b) counsel to the Official Committee of Unsecured Creditors; and (c) parties who have filed a notice of appearance with the Clerk of the Court and requested notice of filings in these cases. Additionally, Rock Creek will provide notice of this Final Application, by electronic mail, to: (i) BarFly Ventures, LLC, c/o Mark A. Sellers, III, 35 Oakes Street, SW, Suite 400, Grand Rapids, Michigan 49503, email: mark@barflyventures.com; (ii) the Office of the United States Trustee, 125 Ottawa Street, Suite 200R, Grand Rapids, Michigan 49503 (Attn. Michael Maggio), email: michael.v.maggio@usdoj.gov; (iii) Sugar Felsenhal Grais & Helsinger, LLP, 30 N. La Salle Street, Suite 3000, Chicago, IL 60602 (Attn: Michael S. Brandeess), email: mbrandess@sfgch.com; (iv) Jaffe Rait Heuer & Weiss, P.C., 27777 Franklin Road, Suite 2500, Southfield, MI 48034 (Attn: Paul r. Hage), email: phage@jaffelaw.com; (v) Rayman & Knight, 141 E Michigan Ave # 301, Kalamazoo, Michigan 49007 (Attn: Steve Rayman), email: slr@raymanknight.com; and (vi) Paul Hastings LLP, 71 South Wacker Drive, Suite 4500, Chicago, Illinois 60606 (Attn: Nathan S. Gimpel), email: nathangimpel@paulhastings.com. Rock Creek submits that, in light of the nature of the relief requested, no other or further notice need be provided.

WHEREFORE, Rock Creek requests that the Court enter an order (a) awarding Rock Creek compensation on a final basis in the amount of **\$762,577.50** in fees and **\$738.68** in expenses, (b) allowing such compensation as an administrative expense claim of the Debtors' estates pursuant to 11 U.S.C. § 503(b) and 507(a)(2); (c) authorizing the unpaid balance of such approved

compensation to be paid by the Debtors; and (d) awarding Rock Creek such other and further relief as the Court may deem just or proper.

Dated: March 16, 2021

WARNER NORCROSS + JUDD LLP

/s/ Elisabeth M. Von Eitzen

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